IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11484 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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DEEPAKBHAI NARANBHAI PATEL

Versus

COMMISSIONER OF POLICE

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Appearance:

MR KAMIN SHUKLA for MR SATISH R PATEL for Petitioner No. 1

MR RM CHAUHAN, AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 01.05.2003 passed by the Commissioner of Police, Surat City, against

him, in exercise of powers under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "dangerous person" within the meaning of the PASA Act, and directing the detention of the petitioner. In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 01.5.2003.

2. The grounds of detention served upon the petitioner and as placed on record reveal that the detaining authority placed reliance on the fact that four offences came to be registered against the petitioner on 19.11.2001, on 17.5.2002, 10.5.2002 and 4.1.2002 and 21.8.2002 under Section 379 of the IPC. The detaining authority also took into consideration two in-camera statements recorded by the sponsoring authority on 2.4.2003, verified by the detaining authority on 24.4.2003, revealing the incidents occurred on 21.12.2002 and 13.2.2003. Both these incidents are unreported to the police. From the above material, the order impugned came to be passed by the detaining authority.

3. Learned Advocate Mrs. Kamin Shukla for Mr. Satish Patel for the petitioner and learned AGP Mr. R.M.Chauhan for the respondents were heard at length.

4. Out of various grounds urged on behalf of the petitioner and controverted by the AGP, from rival contentions, it appears that the matter can be discussed and be decided on the sole ground whether there is delay in passing the order. It is an established law that there should be proximity between the objectionable activities of the petitioner and passing of the order of detention. There should not be delay in passing the order so as to snap the live link between the objectionable activities of the detenu and the passing of the order. If chronology of events relied upon by the detaining authority is scrutinised, it is clear that the last offence under Section 379 of the IPC came to be registered against the petitioner on 21.8.2002 and order came to be passed on 1.5.2003, about 9 months after the registration of the last offence against the petitioner. Though the sponsoring authority recorded two in-camera statements on 31.3.2003 and on 1st of April, 2003, reveal the incidents of 21.12.2002 and 13.2.2003, but still counting the time from unreported incidents also, the order came to be passed after three months. Above all, the in-camera statements could be recorded by the sponsoring authority only in the end of March and on 1st of April, 2003. Having regard to this chronology of

events as relied upon by the detaining authority, it clearly appears that the live link and the proximity between the objectionable activities of the petitioner and passing of the detention order is snapped. The facts of the case are covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. In para 21, this Court observed as under:

" 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. The unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

The order impugned in this petition is required to be quashed and set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the Commissioner of Police, Surat City, on 01.05.2003 under Section 3(2) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)